

Application No. 10/580,820
Amendment dated July 28, 2011
Reply to Office Action of April 28, 2011

REMARKS

Reconsideration And Allowance Are Respectfully Requested.

Claims 1-3, 5-7, 9, and 11 are currently pending. Claims 1 and 5 have been amended. Claims 4, 8, and 10 have been canceled. No new matter has been added. No new claims have been added. Reconsideration is respectfully requested.

In response to the Final Office Action of April 28, 2011, Applicant includes an amendment to the claims together with a Request for Continued Examination.

We have also identified and corrected a minor error in the Specification as filed at page 4, line 9. This portion has been corrected to read:

GV24.5 / 3rd Eye Point: This point sits directly between the eyes and has a major role in acne control via its activation and link to the hormone secreting pituitary gland and assists to enhance total skin condition.

The error and its correction would immediately be apparent to a person skilled in the art. The term "3rd Eye Point" and associated descriptive material correspond with the acupressure point identified as GV24.5, whereas the acupressure point identified as GV4.5 is somewhere on a user's lower back. Such correction does not include new matter, but merely constitutes the correction of a typographical error.

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Claims 1-3, 5-7, 9, and 11 were rejected under 35 USC § 103(a) as being unpatentable over Japanese Patent No. 63-166235 (Fujihara) in view of U.S. Patent No. 3,279,468 (Le Vine).

Independent claim 1 has been amended to more clearly define the positioning of a plurality of openings which are adapted to receive non-compressible, non-conductive passive pressure points. Support for the amendment can be found in the Specification on page 3, line 31 to page 4, line 11.

Amended claim 1 claims that the openings are provided in three regions of the mask corresponding to five acupressure points. The particular positions claimed are not disclosed or suggested by Fujihara alone or in combination with LeVine. The primary document, Japanese Patent No. 63-166235, discloses simply that openings are provided in a variety of positions over the mask body. In that sense, the mask of Fujihara does not disclose or suggest positioning of the openings in the manner required by the claimed therapeutic facial mask as defined in claim 1. Fujihara discloses that openings are provided across the mask body and are not restricted to a particular position or region(s). This allows a user to place "projections" in any position relative to a user's face.

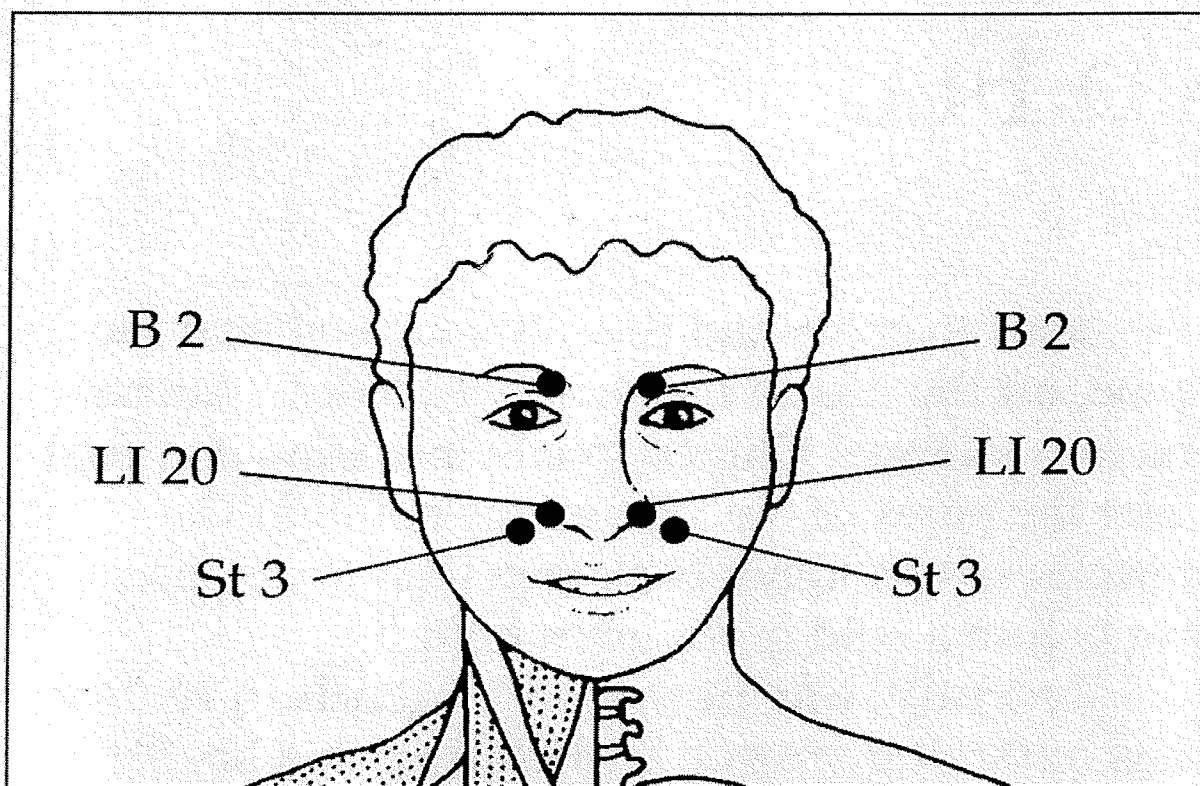
The present invention, in contrast, limits the positions in which the pressure points can be placed. This is an important difference and distinction. The efficacy of the present invention is increased by positioning pressure points at five well defined acupressure areas. The user is, therefore, more likely to see a beneficial effect using the mask of the present

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invention due to the provision of openings in only a limited number of select regions. The claimed invention makes it more difficult for a user, who is not an expert in the location of acupressure points, to misplace the pressure points. According to the mask disclosed by Fujihara, the user is not advised and can place the projections anywhere. As the recent decision of the Federal Circuit in *In re Klein* makes very clear, the problem being addressed by both the claimed invention and the cited prior art are critical elements in determining whether obviousness exists.

Finally, we note that Fujihara does not expressly teach or suggest the particular regions as identified in amended claim 1. Further, it is not disclosed or suggested in Fujihara that the mask is actually capable of overlying the ST3 acupressure point. There is certainly no express teaching of this in Fujihara. As indicated in the present application as claimed, the ST3 point is located at the base of the cheekbone on either side of the face. Given the illustration in Figure 1 of Fujihara, it does not teach a mask that covers ST3. As the patent laws make clear, each and every element of a claimed invention must be disclosed in the art, whether taken alone or in combination.

We have included an image below of the position of the ST3 site.



It is clear from a comparison of the mask illustrated in Figure 1 of Fujihara that the mask is not designed to cover ST3. Therefore, Fujihara is not capable of combination with LeVine to teach or disclose all of the essential features of the invention. The amendments, therefore, overcome the Examiner's rejection of claim 1 and all of the dependent claims.

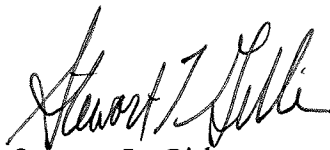
The claim amendments made with this response do not indicate agreement with the Examiner's rejection, and all previous arguments and traversals are maintained. The amendments made in this response are made to further prosecution on the merits, and

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without prejudice to the Applicant filing one or more continuation applications having claims as originally or previously presented.

It is believed that this case is in condition for allowance and reconsideration thereof and early issuance is respectfully requested. If it is felt that an interview would expedite prosecution of this application, please do not hesitate to contact Applicants' representative at the below number.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stewart L. Gitler". The signature is fluid and cursive, with the first name "Stewart" and last name "Gitler" clearly distinguishable.

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